727 divided among the Banyarwanda warriors, who had to remit part of it to the Mwami (iminyago).

The king then reassembled his council and announced the end of the war.

[107] SECTION VI. JUSTICE

## CHAPTER I. PENAL LAW

685 ### 1. Theft (1) of Provisions and Small Livestock

1. Theft is called ubujura or ubgibyi. The word umujura designates the thief in general. The umushimusi is the cattle thief and the igisambo is the robber of provisions, tools, etc.

a) Thief Caught in the Act (flagrante delicto) (muchyuho).

Whoever found a thief in his rugo could, in the recent past, kill him with impunity, but if the victim of the theft did not succeed in giving the thief the unexpected mortal blow, and the antagonists got to fighting, the thief had to be brought before the [694] hill chief. Today the hill chief has the presumed culprit apprehended by some of his men, who bind him and lock him up until he is brought before the tribunal. However, the relatives or shebuja of the thief can offer a present (inchamugozi, lit., which cuts the cord) to the chief so that he may be unbound. At the tribunal they offer to pay the robbed man the ingurano (from kugura, to buy back), an indemnity which is not necessarily of the same nature as the object of the theft; for instance, hoes can be handed over for a basket of sorghum that has been stolen. The robbed man claims in addition the inchachyuho (2) for the violation of his

2. Lit., "the one (the cow) that cuts, delivers (the thief) for the break (into the rugo)."

685 property right; it usually consists of a hoe. [108] If the thief is poor, a rich man may indemnify the victim of the theft, but in exchange he requires [from the thief] payments in the form of work.

In the past, if no intervention was made in his favor, the thief became the slave of the robbed man (umugaramu, the one who is bought back) for a certain period of time. However, he was well treated by the master and could even, when liberated, become his client.

b) Thief Not Caught in the Act.

685 694 In this case the robbed man has a discreet investigation made by a person who will not arouse suspicion. As soon as the investigator has gathered some information, he notifies the victim of the theft. The latter, with the help of his relatives or friends, goes and takes back his property and even something more; or else he arrests the thief or notifies the chief who has the thief apprehended. The man who was robbed must furnish the chief with proof of the crime (igihanga, lit., the head). Even if the robbed man has been paid back, the thief must pay him the umunani, representing eight times the value of the theft. Until the payment of this indemnity is complete, the thief remains in chains and is even beaten, unless he gives the inchamugozi. In addition to the imunani [sic] he is required to pay the inchachyuho.

685 The highway robber (umwambuzi) is sentenced to corporal punishment and to return what he has taken.

If the Mututsi, by any remote chance, stole provisions or small livestock, he would be given the usual punishments, and an even worse penalty, banishment from Mututsi society, for this theft would degrade and return him to the rank of Bahutu.

The umugambanyi (informer, traitor) does not steal himself, but sends some abajura (thieves) to commit [109] the crime. The ichyitso is one who gives the thieves necessary information. The umugambanyi is deprived of his property and bound and beaten until he has paid the umunani [sic]; then he is driven from the hill, and his rugo destroyed or given to another man. The punishment of the ichyitso is the same except that he is not held to the payment of the umumani.

692 will go to the king begins between the men (meaning here the arbiters)."

The chief who is judge is always assisted by its abagaragu conversant with the common law of the country, who have the collective name of abachamanza (arbitrating judges). In very delicate matters the case may be postponed to a later date to permit particularly competent abagaragu to handle it. The abachamanza are not necessarily Batutsi; Bahutu may be appointed as assessors and are thus called upon to judge an affair in which a Mututsi is involved.

694 Cases are brought before the tribunal in two ways:

a) When the hill chief (igisonga) or the subchief (umuhingisha) hears that a crime has been committed, [116] he sends a few of his men to arrest the individual who is suspected by public rumor of having committed the offense. The latter, tightly bound, remains shut up in an enclosure open to the winds, located near the chief's house, until the tribunal decides on his fate. During this period of preliminary detention, some of the chief's abagaragu, whether judges or not, question the presumed guilty person and attempt to make him confess his crime (kwindja, lit., to tempt, to solicit).

b) In civil matters the plaintif (umulezi) goes to the chief before whom he squats down, his stick and his spear against his shoulder, claps his hands, and says to the chief: Nimugahorane Imâna! (May God help you!) (implying, to judge my palaver). The defendant (ulegwa) is asked to appear. If after three successive summonses he persists in not appearing, the chief has him called once more. If he still defaults, his adversary has won his case.

695 The tribunal sits on the threshold of the chief's dwelling, where the ibitabo (1) are, or else under the porch in front of the

1. Small, very low festoon-shaped mud walls.

insika (2).

2. A kind of wickerwork screens decorating the base of the pillars supporting the hut's roof.

8: Hall G-5 (1929-31) 1938 FO42 Rundi FO42



An instance which shows a number of these possibilities comes from the court book of Bugufi, a chiefdom in the north-west of Tanganyika Territory. A custom which might or might not be noted by the ethnographer—something must escape the most meticulous of observers, and this one is not recorded by Meyer for the Barundi, of whom the people of Bugufi are ethnologically part—is the right of the chief to pasture his cattle among the millet-stalks after the harvest, before the peasant may put in his own cattle or any which he is herding for some one else. The court book records eight peasants coming to court to complain against a Tusi who has driven off their cattle. The Tusi replies that the men had pastured their cattle in their millet before the chief had had access. Asked by the court whether he was instructed to drive off the cattle, the Tusi replies that he acted as he was bound to do in accordance with ancient custom and his obligations to the chief. New concepts have, however, found their way into the court, which gives judgement for the plaintiffs on the grounds that the land and the cattle were theirs. This case is exceptional in the wealth of statement and suggestion which it offers, but there are many others helpful in lesser degree.

The value of native court records in this way was brought home to me while stationed in this area, Bugufi, during the years 1929–31, when I went through the available material with a view to seeing what were the normal causes of litigation and getting a general idea of the law administered. Starting with the year 1924, the series was examined up to the end of 1930. For these seven years, 850 cases were found where judgement issued, there being a further 225 which had been settled out of court or dismissed for want of prosecution or by reason of limitation. Of these 850 cases, almost one-quarter concerned contracts where cattle were involved, nearly one-sixth were marital cases, and another sixth were over administrative matters, including offences against the Native Authority Ordinance: only one-seventh were of offences against person and property, and the remainder concerned debts, land, inheritance, damage to property and a few miscellaneous matters.

The fullest records were those of the numerous marital cases, and these have been fully collated with a view to giving an idea of how much information can be gleaned and what gaps remain, and what

8: Hall G-5 (1929-31) 1938 FO42 Rundi FO42



| | |
|---|---|
| 1 cow, 7 hoes (twice). | 7 hoes. |
| 1 cow, 6 hoes, 1 pot of beer. | 4 hoes, 3 pots of beer. |
| 1 cow, 4 hoes, 3 pots of beer. | 1 hoe, 5 pots of beer. |
| 1 cow, 6 hoes (twice). | 2 hoes, 3/50 worth of cloth. |
| 1 cow, 5 hoes (four times). | 5 hoes (twice). |
| 1 cow, 5 pots of beer. | 4 hoes (twice). |
| 1 cow (thirteen times). | 1 hoe. |

The analysis of this list reveals 42 cases where bride-wealth is paid in cattle, alone or accompanied by hoes, beer, cash, or a combination of these latter. Thence, with a few exceptions, there is an abrupt drop to a standard where hoes alone or with beer are paid in bride-wealth, three of the exceptions being where cash is paid with beer: there are 27 cases in this second main class. The quantitative relation of the number of bride-wealths in media other than cattle to those where cattle are a constituent is unlikely to be of importance. There is a standard fee of 2*s*. in marital causes in the Native Court, and a man who can only command sufficient property to pay a bride-wealth of a few hoes is not to be expected readily to raise a court fee.

A summary of the analysis shows:

20 cases of payment in cattle alone.
10 " " of cattle with hoes.
1 " " " " beer.
8 " " " " hoes and beer.
2 " " " " beer and cash.

11 cases of payment in hoes alone.
6 " " of hoes with beer.
3 " " of cash with beer.
1 " " of cash with cloth.
1 " " of cash alone.
1 " " of hoes and cloth.
3 " " of goats, once with a bracelet, once with hoes and beer, and once with hoes and cash.

There are evident norms of payment in cattle alone and of payment in hoes alone, but further investigation is needed to discover how far these correspond with the symbiotic social system of pastoral Tusi and agricultural Hutu. A wide field of suggestion is opened up. For instance, are there any cases of wealthy Hutu paying bride-wealth in